

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

LAWRENCE EDWARD SALONE, JR.,

Petitioner,

vs.

BUREAU OF PRISONS,

Respondent.

CASE NO. CV 09-08460 AG (RZ)

ORDER ACCEPTING FINDINGS,
CONCLUSIONS AND
RECOMMENDATIONS OF UNITED
STATES MAGISTRATE JUDGE

Pursuant to 28 U.S.C. § 636, the Court has reviewed the Petition, records on file, and the Report and Recommendation of United States Magistrate Judge, and has considered de novo the portions of the Report as to which Petitioner has filed objections. Essentially, Petitioner objects that the recommended mootness-based dismissal is unwarranted because, although he received the expungement and sentencing credit he had demanded, he did not also receive restitution.

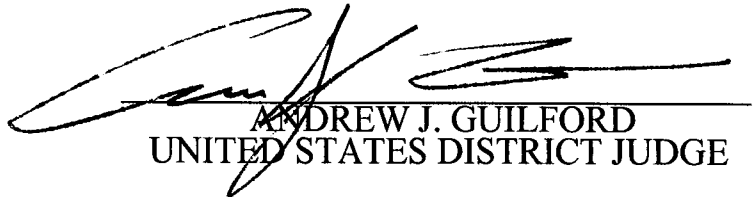
For the following three reasons, the objections do not persuade the Court. First, Petitioner did not pray for restitution in his petition. He sought only expungement and sentencing credit. (As interim relief, he also sought appointment of counsel.) His final boilerplate reference to “such other and further relief as” is appropriate cannot fairly be understood as a prayer for restitution or damages.

1 Second, whether prayed for or not, damages ordinarily are not available in a
2 habeas proceeding. Generally, habeas petitions properly may challenge only the fact or
3 duration of confinement. *See generally Preiser v. Rodriguez*, 411 U.S. 475, 484, 93 S. Ct.
4 1827, 36 L. Ed. 2d 439 (1973).

5 Third, Petitioner's objections do not excuse or alter the fact that, as recited
6 in the Report, Petitioner failed to respond to the Magistrate Judge's show-cause order –
7 an order whose sole purpose was to give Petitioner a chance to explain why the action
8 might not be moot. His silence permitted the Court to deem him to have consented to
9 dismissal. It was for that reason, in addition to Respondent's submissions, that the
10 Magistrate Judge prepared the Report in the first place.

11 With the foregoing observations, the Court accepts the findings and
12 recommendations of the Magistrate Judge.

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14 DATED: ~~MAY~~ 18, 2010

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17 ANDREW J. GUILFORD
18 UNITED STATES DISTRICT JUDGE
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